

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Mobil Petroleum Co., Inc. :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation Franchise
Tax under Article 9A of the Tax Law for the Years
1976 & 1977. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 26th day of July, 1984, he served the within notice of Decision by certified mail upon Mobil Petroleum Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mobil Petroleum Co., Inc.
P.O. Box 900
Dallas, TX 75221

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
26th day of July, 1984.

David Parchuck

William P. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mobil Petroleum Co., Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law :
for the Years 1976 & 1977. :

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 26th day of July, 1984, he served the within notice of Decision by certified mail upon M. B. Aidinoff, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

M. B. Aidinoff
Sullivan & Cromwell
125 Broad St.
New York, NY 10004

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
26th day of July, 1984.

David Parchuck

James A. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Mobil Oil Corporation :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation Franchise
Tax under Article 9A of the Tax Law
for the Year 1977. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 26th day of July, 1984, he served the within notice of Decision by certified mail upon Mobil Oil Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mobil Oil Corporation
P.O. Box 900
Dallas, TX 75221

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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Sworn to before me this
26th day of July, 1984.

David Parchuck

James J. Thompson

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Mobil Oil Corporation :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law :
for the Year 1977.

State of New York }
County of Albany } ss.:

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New York, NY 10004

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Sworn to before me this
26th day of July, 1984.

David Parchuck

Amie R. Hennessey
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Mobil International Finance Corp.

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation Franchise
Tax under Article 9A of the Tax Law for the Years
1975-77 and for period 1/1/78-2/28/78. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 26th day of July, 1984, he served the within notice of Decision by certified mail upon Mobil International Finance Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mobil International Finance Corp.
P.O. Box 900
Dallas, TX 75221

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
26th day of July, 1984.

David Parchuck

James R. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Mobil International Finance Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation
Franchise Tax under Article 9A of the Tax Law for :
the Years 1975-77 and for period 1/1/78-2/28/78.

State of New York }
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26th day of July, 1984.

David Parchuck

William G. Highland
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 26, 1984

Mobil International Finance Corp.
P.O. Box 900
Dallas, TX 75221

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 Months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
M. B. Aidinoff
Sullivan & Cromwell
125 Broad St.
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 26, 1984

Mobil Oil Corporation
P.O. Box 900
Dallas, TX 75221

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 Months from the date of this notice.

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NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
M. B. Aidinoff
Sullivan & Cromwell
125 Broad St.
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 26, 1984

Mobil Petroleum Co., Inc.
P.O. Box 900
Dallas, TX 75221

Gentlemen:

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Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
M. B. Aidinoff
Sullivan & Cromwell
125 Broad St.
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
:
of :
:
MOBIL INTERNATIONAL FINANCE CORPORATION :
:
for Redetermination of a Deficiency or for :
Refund of Franchise Tax on Business Corporations :
under Article 9-A of the Tax Law for the Years :
1975, 1976 and 1977 and for the Period :
January 1 through February 28, 1978. :
:

In the Matter of the Petition :
:
of :
:
MOBIL PETROLEUM COMPANY, INC. :
:
for Redetermination of a Deficiency or for :
Refund of Franchise Tax on Business Corporations :
under Article 9-A of the Tax Law for the Years :
1976 and 1977. :
:

DECISION

In the Matter of the Petition :
:
of :
:
MOBIL OIL CORPORATION :
:
for Redetermination of a Deficiency or for :
Refund of Franchise Tax on Business Corporations :
under Article 9-A of the Tax Law for the Year :
1977. :
:

Petitioner, Mobil International Finance Corporation, Box 900, Dallas,
Texas 75221, filed a petition for redetermination of a deficiency or for refund
of franchise tax on business corporations under Article 9-A of the Tax Law for
the years 1975, 1976 and 1977 and for the period January 1 through February 28,
1978 (File No. 33640).

Petitioner, Mobil Petroleum Company, Inc., Box 900, Dallas, Texas 75221, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1976 and 1977 (File No. 33641).

Petitioner, Mobil Oil Corporation, Box 900, Dallas, Texas 75221, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year 1977 (File No. 33639).

A consolidated formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 9, 1983 at 9:15 A.M., with all briefs to be submitted by March 23, 1984. Petitioners appeared by Sullivan & Cromwell, Esqs. (Henry Stow Lovejoy, Esq. and M. Bernard Aidinoff, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel). On the date of the formal hearing, Mr. Lovejoy on behalf of petitioners and Ms. Colello on behalf of the Audit Division executed three stipulations, setting forth relevant facts with regard to each petitioner. The provisions of said stipulations are recited in Findings of Fact 1 through 34, infra.

ISSUE

Whether investments by petitioner Mobil International Finance Corporation in evidences of indebtedness of Mobil Oil Holdings, S.A., Mobil Oil A.G., Toa Nenryo Kogyo K.K., Kyokuto Sekiyu Kogyo K.K., Nichimo Sekiyu Seisei K.K., Mobil Hong Kong Limited, Mobil Joliet Refining Corporation, Mobil Possessions Company, Mobil North Sea Limited and Mei Foo Investments Ltd. constituted investment capital within the meaning of Tax Law section 208, subdivision 5.

FINDINGS OF FACT

1. Mobil International Finance Corporation ("MIFC") is a Delaware corporation with its principal offices, during the period from January 1, 1975 to February 28, 1978, at 150 East 42nd Street, New York, New York 10017.

2. MIFC timely filed New York State franchise tax reports for the period January 1, 1975 through February 28, 1978 showing the following amounts of tax:

| <u>Period</u> | <u>Tax</u> |
|-----------------|------------|
| 1/1/75-12/31/75 | \$ 745.43 |
| 1/1/76-12/31/76 | 1,356.46 |
| 1/1/77-12/31/77 | 10,328.00 |
| 1/1/78-2/28/78 | 4,111.14 |

These amounts were timely paid by MIFC.

3. On its reports, MIFC calculated its franchise tax on the basis of its allocated business and investment capital. The amounts and allocation factors reported for each period are as follows:

| <u>Period Ended</u> | <u>Business Capital</u> | <u>Allocation Percentage</u> | <u>Investment Capital</u> | <u>Allocation Percentage</u> |
|---------------------|-------------------------|------------------------------|---------------------------|------------------------------|
| 12/31/75 | \$ 348,910 | 100% | \$ 59,577,970 | .000127% |
| 12/31/76 | 762,057 | 100% | 57,854,569 | 0% |
| 12/31/77 | 5,801,642 | 100% | 209,715,063 | .000290% |
| 2/28/78 | 13,856,088.57 | 100% | 360,164,361.76 | .000466% |

4. Pursuant to an audit of Mobil Oil Corporation ("Mobil"), Mobil Petroleum Company, Inc. ("Mobil Petroleum") and MIFC, the Audit Division issued notices of deficiency to MIFC in the following amounts:

| <u>Period</u> | <u>Deficiency</u> |
|-----------------|-------------------|
| 1/1/75-12/31/75 | \$214,908.00 |
| 1/1/76-12/31/76 | 163,387.00 |
| 1/1/77-12/31/77 | 577,971.00 |
| 1/1/78-2/28/78 | 81,063.00 |

Interest was also computed on these amounts.

5. Mobil Petroleum is a Delaware corporation with its principal offices during 1976 and 1977 at 150 East 42nd Street, New York, New York 10017.

6. Mobil Petroleum timely filed New York State franchise tax reports for the years 1976 and 1977 showing tax of \$382.37 and \$10,169.59, respectively. These amounts were timely paid by Mobil Petroleum.

7. On its report for 1976, Mobil Petroleum paid a tax of \$132.37 based on subsidiary capital. In computing its allocated subsidiary capital for 1976, Mobil Petroleum used a subsidiary allocation factor for MIFC of 0.582353 percent.

8. On its report for 1977, Mobil Petroleum paid tax of \$156.62 based on subsidiary capital. In computing its allocated subsidiary capital for 1977, Mobil Petroleum used a subsidiary allocation factor for MIFC of 1.3001 percent.

9. Pursuant to an audit of Mobil, Mobil Petroleum and MIFC, the Audit Division issued a Notice of Deficiency to Mobil Petroleum in the amount of \$26,844.00, plus interest. This deficiency consisted of an additional tax on subsidiary capital of \$20,125.00 for 1976 and \$3,224.00 for 1977, plus several other adjustments that are not at issue here.

10. Mobil Petroleum timely filed a petition for redetermination of the deficiency on May 19, 1981.

11. Mobil is a New York corporation with its principal offices during the year 1977 at 150 East 42nd Street, New York, New York 10017.

12. Mobil timely filed its New York State franchise tax report for 1977 showing tax of \$5,555,464.75, against which there was a credit of \$297,457.37, leaving a balance of \$5,258,007.38. This amount was timely paid by Mobil.

13. On its report for 1977, Mobil paid a tax based on subsidiary capital. In computing its allocated subsidiary capital, Mobil used a subsidiary allocation

factor for Mobil Petroleum of .0076 percent and a subsidiary allocation factor for MIFC of 1.3001 percent.

14. Pursuant to an audit of Mobil, Mobil Petroleum and MIFC, the Audit Division issued a Notice of Deficiency to Mobil for the year 1977 in the amount of \$166,998.00, plus interest.

15. Mobil timely filed a petition for redetermination of the deficiency on May 19, 1981.

16. MIFC was incorporated in 1968 for the purpose of obtaining funds from non-United States sources to aid in financing the requirements of foreign operations of subsidiaries and affiliates of Mobil. It has conducted its business so that more than 80 percent of its gross income has been derived from sources outside the United States.

17. In August, 1968, MIFC issued \$35,000,000.00 principal amount of 7 percent Guaranteed Bonds due 1986, unconditionally guaranteed by Mobil. The prospectus for that issue states the purpose thereof as follows:

"The net proceeds to be received from the sale of the Bonds will be invested in or loaned to certain of the Guarantor's subsidiaries or affiliates to assist them in financing working capital requirements and capital expenditure programmes, and may also be used for direct or indirect investments in other companies. Pending long-term investment of the proceeds from the sale of the Bonds, the Company may make temporary investments in obligations of foreign governments or corporations or may make deposits with banks."

18. In April and July, 1970, MIFC borrowed \$9,281,600.00 from Istituto Mobilaire Italiano for use in investments in affiliates.

19. During the period January 1, 1975 through February 28, 1978, MIFC held evidences of indebtedness of the following affiliates of Mobil: Mobil Oil Holdings, S.A., Mobil Oil A.G., Toa Nenryo Kogyo K.K., Kyokuto Sekiyu Kogyo K.K., Nichimo Sekiyu Seisei K.K., Mobil Hong Kong Limited, Mobil Joliet Refining

Corporation, Mobil Possessions Company, Mobil North Sea Limited and Mei Foo Investments Ltd.

20. At the end of its fiscal year on December 31, 1975, MIFC held evidences of indebtedness of Mobil Oil Holdings, S.A., Mobil Oil A.G., Toa Nenryo Kogyo K.K., Kyokuto Sekiyu Kogyo K.K., and Nichimo Sekiyu Seisei K.K. In addition, MIFC had time deposits with the London branches of Mitsubishi Bank Ltd., Sumitomo Bank Ltd., and Fuji Bank Ltd.

In its Financial Statements and Schedules, MIFC classified the evidences of indebtedness of Toa Nenryo Kogyo K.K., Kyokuto Sekiyu K.K. and Nichimo Sekiyu Seisei K.K. as "long-term advances - noncurrent" and those of Mobil Oil Holdings, S.A. and Mobil Oil A.G. as "intercompany notes receivable".

21. The evidence of indebtedness of Mobil Oil Holdings, S.A. was a letter evidencing a loan due November 7, 1975. The letter stated, in part:

"This letter will confirm the agreement that Mobil International Finance Corporation will renew its \$4,750,000 deposit which matures November 7, 1974. As agreed this amount will be deposited with Mobil Oil Holdings S.A. in the name of MIFCO for the period November 7, 1974 to November 7, 1975 at 9-1/2% interest per annum. Mobil International Finance Corporation shall have the right at any time, and from time to time, upon 10 days' written notice from Mobil International Finance Corporation to Mobil Oil Holdings S.A. to withdraw the deposit in whole or in part, without penalty, with accrued interest to the date of such withdrawal on the amount withdrawn."

MIFC renewed the loan and sold it to Mobil Petroleum on September 21, 1976.

The evidence of indebtedness was not a security of the type sold in the private placement market¹ nor dealt in as a medium of investment.

¹ The private placement market is comprised of insurance companies and other sophisticated institutions which purchase securities not registered, and not required to be registered, with the Securities and Exchange Commission. A private placement can be a debt security or equity such as preferred stock. The average market volume over the past five years has been approximately 16 to 25 billion dollars.

Mobil Oil Holdings, S.A. is a Luxembourg corporation engaged in financing affiliates and subsidiaries of Mobil operating outside the United States. It used the proceeds of the loan for the above purposes.

22. The evidence of indebtedness of Mobil Oil A.G. was a promissory note for the principal amount of 50 million deutschmarks with interest thereon at the rate of 8.5 percent per annum, due February 15, 1985. MIFC purchased the promissory note of Mobil Oil A.G. from Mobil as of December 31, 1970 and sold it to Mobil Petroleum on October 15, 1976. The note was of a type sold in the private placement market and dealt in as a medium of investment, and could have been (but was not) sold to an investor in the private placement market.

Mobil Oil A.G. is a German corporation engaged in the exploration for and production of crude oil and natural gas, the refining of crude oil and the marketing of petroleum products in Germany. It used the proceeds of the promissory note to meet working capital requirements.

23. The evidences of indebtedness of Toa Nenryo Kogyo K.K. were notes due at various dates between 1975 and 1981. MIFC purchased these notes from Mobil Petroleum on December 31, 1970, January 30, 1971, March 1, 1971, April 1, 1971, May 1, 1971, July 1, 1971 and August 1, 1971 and resold them to Mobil Petroleum on September 21, 1976.

Toa Nenryo Kogyo K.K. is a Japanese corporation engaged in the refining of crude oil in Japan. It used the proceeds of the notes to finance capital expenditures.

24. The evidences of indebtedness of Kyokuto Sekiyu Kogyo K.K. were notes due at various dates between 1976 and 1983. MIFC purchased certain of the notes from Mobil Petroleum on December 31, 1970, and purchased others of them from Kyokuto Sekiyu Kogyo K.K. on January 31, 1972, February 17, 1972, April 5,

1972, May 5, 1972, June 9, 1972 and June 28, 1972. MIFC sold the notes to Mobil Petroleum on September 21, 1976.

Kyokuto Sekiyu Kogyo K.K. is a Japanese corporation engaged in the refining of crude oil in Japan. It used the proceeds of the notes to finance capital expenditures.

25. The evidences of indebtedness of Nichimo Sekiyu Seisei K.K. were non-interest bearing notes due in 1982. MIFC purchased these notes from Mobil Petroleum on December 31, 1970 and resold them to Mobil Petroleum on September 21, 1976. If offered at an appropriate discount, these notes could possibly have been (but were not) sold to an investor in the private placement market.

Nichimo Sekiyu Seisei K.K. is a Japanese corporation engaged in the refining of crude oil in Japan. It used the proceeds of the notes to finance capital expenditures.

26. At the end of its fiscal year on December 31, 1976, MIFC held no evidences of indebtedness in any affiliate. MIFC had time deposits with the London branches of the Industrial Bank of Japan, Sumitomo Bank Ltd., Mitsubishi Bank Ltd. and Dai-Ichi Kangyo Bank Ltd., the Nassau, Bahamas branches of the Bank of America, European-American Bank and Harris Trust and Savings Bank, and the Grand Cayman Island branches of Dresdner Bank and Wachovia Bank and Trust Company.

27. At the end of its fiscal year on December 31, 1977, MIFC held evidences of indebtedness of Mobil Possessions Company, Mobil North Sea Limited and Mei Foo Investments Ltd. In addition, MIFC owned 100 percent of the stock of Mobil Chemicals Canada Ltd. and Mobil Oil Caribe, Inc. and \$50,000.00 principal amount of 8-3/8 percent debentures of Weyerhaeuser Company, and had time deposits in the London branches of Continental Illinois National Bank, Tokai

Bank Ltd., Algemene Bank, Mitsui Bank, Limited and Mitsubishi Bank Ltd., the Nassau, Bahamas branches of Citibank, N.A. and Chemical Bank and the Grand Cayman Island branches of Swiss Bank Corporation, European-American Bank & Trust Company, Wachovia Bank & Trust Company, Westdeutsche Landesbank and Union Bank of Switzerland.

In its Financial Statements and Schedules, MIFC classified the evidences of indebtedness of Mobil Possessions Company, Mobil North Sea Limited and Mei Foo Investments Ltd. as "intercompany notes receivable".

28. In February, 1977, MIFC issued \$100,000,000.00 principal amount of 6 percent Guaranteed Notes due 1982 and \$100,000,000.00 principal amount of 6-1/2 percent Guaranteed Notes due 1984 through the Union Bank of Switzerland. In each case, the notes were guaranteed by Mobil.

29. On February 3, 1977, MIFC received from Mobil Petroleum, as a contribution to capital, a promissory note of Mobil Oil Hong Kong Limited with a principal amount of \$27,364,338.39 and cash in the amount of \$9,701,125.00. Mobil Oil Hong Kong Limited repaid the note in installments, with final payment on December 31, 1977. On February 4, 1977, MIFC received from Mobil, as a contribution to capital, \$32,777,678.40 in cash and Eurodollar time deposits in an amount of \$55,000,000.00. On February 8, 1977, MIFC received from Mobil, as a contribution to capital, \$5,014,000.00 in cash.

30. The evidence of indebtedness of Mobil Joliet Refining Corporation was a promissory note for the principal amount of \$30,000,000.00 with interest thereon at the rate of 5-1/16 percent per annum, due February 3, 1982. MIFC received this promissory note on February 4, 1977 from Mobil Joliet Refining Corporation in exchange for \$30,000,000.00. Mobil Joliet Refining Corporation prepaid the note on February 9, 1977, together with interest of \$21,093.75.

The note was of a type sold in the private placement market and dealt in as a medium of investment, and could have been (but was not) sold to an investor in the private placement market.

31. The evidence of indebtedness of Mobil Possessions Company was a demand note for the principal amount of \$2,270,000.00 with interest "at a rate calculated on the basis of the London Interbank Offered Rate (LIBO) for three-month maturities, as quoted by Citibank...plus 1/2 percent...". MIFC received this demand note on or about September 15, 1977 from Mobil Possessions Company in exchange for \$2,270,000.00. The note was of a type sold in the private placement market and dealt in as a medium of investment, and could have been (but was not) sold to an investor in the private placement market.

Mobil Possessions Company is a United States corporation² engaged in the sale of marine fuels and lubricants in the Canal Zone. It is believed that it used the proceeds of the note to meet working capital requirements.

32. The evidence of indebtedness of Mobil North Sea Limited was a promissory note for the principal amount of \$200,000,000.00 with interest thereon at the rate of 7-1/2 percent per annum, due February 10, 1982. MIFC received this note from Mobil North Sea Limited on or about May 16, 1977. The note was of a type sold in the private placement market and dealt in as a medium of investment, and could have been (but was not) sold to an investor in the private placement market.

Mobil North Sea Limited is a Delaware corporation engaged in the exploration for and production of crude oil and natural gas in the United

² The demand note dated September 15, 1977 refers to Mobil Possessions Company as "a company incorporated under the laws of the State of Delaware".

Kingdom. It used the proceeds of the promissory note to finance capital expenditures.

33. The evidence of indebtedness of Mei Foo Investments Ltd. was a note for the principal amount of \$4,000,000.00 with interest thereon at the three-month London Interbank Offered Rate for Eurodollars plus .25 percent premium, due December 29, 1978. MIFC received this note from Mei Foo Investments Ltd. on December 29, 1977. The note was of a type sold in the private placement market and dealt in as a medium of investment, and could have been (but was not) sold to an investor in the private placement market.

Mei Foo Investments Ltd. is a Hong Kong corporation engaged in the real estate business in Hong Kong. It used the proceeds of the note to meet working capital requirements.

34. Commercial paper is a security issued by a corporation, customarily sold in the open market, designed as a means of investment, and issued for the purpose of financing corporate enterprises.

35. The Audit Division maintains that the evidences of indebtedness held by MIFC and at issue here (described in Findings of Fact "21" through "25" and "28" through "32") constituted business capital, giving rise to business income allocated within and without this state in accordance with MIFC's business allocation percentage. Petitioners maintain that such evidences of indebtedness were investment capital, giving rise to investment income allocated in accordance with the allocation percentage of each debtor-affiliate.

CONCLUSIONS OF LAW

A. That Tax Law section 208, subdivision 5 furnishes the definition of the term "investment capital" for purposes of Article 9-A as follows:

"The term 'investment capital' means investments in stocks, bonds and other securities, corporate and governmental, not held for sale to customers in the regular course of business, exclusive of subsidiary capital and stock issued by the taxpayer, provided, however, that, in the discretion of the tax commission, there shall be deducted from investment capital any liabilities payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the report, which are attributable to investment capital...".

Among the factors to be considered in determining whether these instruments were securities within the meaning of the above-quoted provision are the following: (1) whether they are of the type customarily sold on the open market or on a recognized exchange; (2) whether they are designed as a means of investment; (3) whether they are commonly recognized by investors as securities; (4) whether they are issued for the purpose of financing corporate enterprises and providing a distribution of the rights in or obligations of such enterprises; and (5) whether, once issued, they are traded as investments. 20 NYCRR 3-4.2(a) and (c), applicable to taxable years commencing on or after January 1, 1976; section 3.31(a) and (c), Ruling of State Tax Comm., March 14, 1962; Matter of Avon Products, Inc. v. State Tax Comm., 90 A.D.2d 393.

B. That we note, initially, that: MIFC was incorporated to assist in financing other members of the Mobil corporate family; the instruments at issue, though transferred, were never held by a non-affiliate; the instruments were not issued as part of a series; and MIFC classified the instruments as advances or intercompany notes in its financial statements.

There is little if any basis in the record to conclude that the evidences of indebtedness of Mobil Oil Holdings, S.A., Toa Nenryo Kogyo K.K., Kyokuto Sekiyu Kogyo K.K., Nichimo Sekiyu Seisei K.K. and Mobil Oil Hong Kong Limited possessed any of the aforementioned characteristics of securities.

The proof regarding the remaining evidences of indebtedness (those of Mobil Oil A.G., Mobil Joliet Refining Corporation, Mobil Possessions Company, Mobil North Sea Limited and Mei Foo Investments Ltd.), that they could have been but never were traded on the private placement market, falls far short of the evidence before the court in Matter of Avon Products, Inc. v. State Tax Comm.,³ supra, and is simply insufficient to establish that the instruments were securities.

C. That the petitions of Mobil International Finance Corporation, Mobil Petroleum Company, Inc. and Mobil Oil Corporation are hereby denied in all respects.

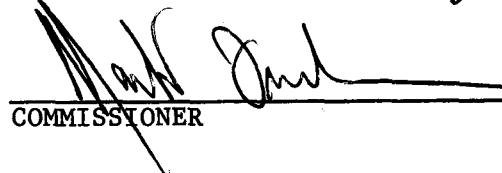
DATED: Albany, New York

STATE TAX COMMISSION

JUL 26 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

³ The Appellate Division, Third Department, determined that bankers' acceptances are securities under section 208, subdivision 5.